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Decided on: 25th March, 2011

..... Petitioner

versus

..... Respondent

HON'BLE MS. JUSTICE MUKTA GUPTA

- MUKTA GUPTA, J.**

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half years, further to pay fine of ₹50,000/- and in default of payment of fine to further undergo Rigorous Imprisonment for a period of six months on both counts.

2. Briefly, the prosecution case is that M/s Foremost Chemicals, 37 kilometre Zone, Rohtak Road, Bahadurgarh, Haryana was insured against fire with New India Assurance Company Ltd., a Government Company as defined under Section 617 of the Companies Act, 1956 for an insured amount of ₹28 lacs vide fire policy Ex. PW1/A valid with effect from 24th February, 1992 to 23rd February, 1993. On 17th July, 1992 major fire broke-out in the factory and thus a claim for ₹9.30 lacs approximately was submitted to the company at its office at Connaught Circus, New Delhi. The Appellant was processing the aforesaid insurance claim as the Administrative Officer of the Insurance Company. On 7th January, 1993 the Complainant Sudhir Kumar, PW1, an authorized signatory of M/s Foremost Chemicals visited the office of the Insurance Company where the Appellant advised to meet him at his residence i.e. 129/A, DDA Flats, Gulabi Bagh, New Delhi 110007 on 8th January, 1993 at about 8:00 a.m. for discussing the matter in detail. On 8th January, 1993, PW 1 visited the residence of the Appellant at the appointed time when he was told that his case was processed and only formal orders from Sh. Sant Lal

Tagra, Sr. Divisional Manager were awaited for the payment of the claim. The Appellant showed PW1 the claim file and demanded an illegal gratification of ₹1,00,000/- for the aforesaid work stating that the bribe amount would be shared between him and S.L. Tagra. The Appellant also stated that the file would be signed by Sh. S.L. Tagra only after receipt of the money and in case PW 1 wants he may confirm the same from Sh. S.L. Tagra that the bribe amount would be shared by him and he would clear the file only after receiving the money. The Appellant called PW1 to the office at about 1:00 p.m. to arrange his meeting with Sh. Tagra and stated that the bribe amount could be paid at the residence of the Appellant on 8th January, 1993 at about 7:00 p.m. As PW 1 did not want to make the payment, he visited the office of CBI on 8th January, 1993 at about 10:30 a.m. and submitted his written complaint Ex. PW1/D to S.P. CBI, Anti Corruption Branch, New Delhi. On the said complaint, FIR Ex. PW8/A was registered and a trap was laid. Two officers of Custom Department Mukesh Aggarwal, PW 2 and Shanti Swaroop PW3 were joined as the panch witnesses for the trap. Since there was a meeting at about One o'clock also at the office at Connaught Circus to verify the facts, PW 2 was directed to accompany PW 1 to the office of the Appellant posing himself as the business partner of PW1. Though

Inspector A.G.L. Kaul and Inspector S.P. Punia also accompanied them however PW1 and PW2 were sent to the Appellant in his office. Both of them met the Appellant where PW 2 was introduced as the partner in the firm. The Appellant took both of them to the chamber of S.L. Tagra, Divisional Manager where, Tagra stated that the objections relating to the claim have been removed and PW 1 would get the cheque within 2 or 3 days. On PW2 asking about the payment to be made to him, S.L. Tagra stated that they should talk about the same to the Appellant. Thereafter, pre-raid proceedings were conducted. Number of Government currency notes were noted down vide memo Ex. PW1/G and phenolphthalein powder was put on them. Thereafter the notes were kept in a brown bag brought by the Complainant. PW 2 acted as the shadow witness posing as the partner of PW1. Trap team reached the residence of the Appellant. The appellant reached home around 9:00 p.m. and thereafter about 15 minutes later PW 1 and PW 2 entered the house of the Appellant, where the Appellant showed the claim file to the Complainant stating that the claim had been passed and only the signatures of Sh. S.L. Tagra were required. The Appellant obtained the signatures of the Complainant on two receipts tagged in the claim file as the same was required for completing the formality for issuing the claim cheque. On the Appellant

demanding the bribe amount PW1 took out ₹1,00,000/- from the hand bag and gave the same to the Appellant who accepted the same with both his hands. In the meantime PW 2 came out of the room and gave the signal to the trap party who rushed inside and caught hold of the Appellant holding the tainted money in his hand. The Appellant tried to conceal the bribe amount under the table. The Appellant was apprehended and both his hands were washed in the sodium carbonate solutions separately and both the solutions turned pink. On completion of investigation, charge-sheet was filed. After recording of evidence, the statement of the Appellant under Section 313 Cr. P.C. and the defence evidence, the Appellant was convicted and sentenced as above.

3. Learned counsel for the Appellant contends that the prosecution has not adduced evidence to show that the Appellant was a public servant. PW 4 who accorded sanction for prosecution of the Appellant has also not stated that the Appellant was a public servant. Moreover, the circumstance that the Appellant was a public servant was not put to him in his statement recorded under Section 313 Cr. P.C. and thus the same cannot be used against him. As per the definition of the “public servant” under Section 2(c)(iii) of the PC Act, a public servant is a person who is in the service or pay of a corporation established by or under a Central,

Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government Company as defined in Section 617 of the Companies Act 1956. It is stated that the learned Trial Court erred in holding the Appellant to fall within the ambit of 'public servant', since the Appellant was employed in a company which was acquired by the Government. There is a clear distinction between a company incorporated by an Act and company acquired by an Act. A person working in a company that has been acquired by an Act does not fall within the ambit of Section 2(c)(iii) of the P.C. Act. Even for taking judicial notice of a fact, the relevant documents have to be placed before the Court by the prosecution. Reliance is placed on *State of Karnataka v. M. Muniswamy* (2000) CCR 263 (SC). Neither the Complainant nor the shadow witness nor the trap witness i.e. PW 1, PW 2 and PW 3 have supported the prosecution case. The essential ingredient of demand has not been proved and thus the Appellant cannot be convicted for demanding and accepting bribe under the P.C. Act. In *A. Subair vs. State of Kerala* 2009 (9) SCC 1985 it was held that in the absence of proof of demand or request from the public servant for a valuable thing or pecuniary advantage, the offence under Section 13(1) (d) cannot be held to be established. Relying on *Banarasi Das vs. State of Haryana*

2010 (IV) A.D. (SC) 305, it is contended that there has to be a positive statement of demand and acceptance by the public servant and the same cannot be established by drawing inference of demand and receipt of the illegal gratification from the fact that the money was recovered from the accused. Seeking support from *C.M. Girish vs. CBI AIR 2009 SC 2002*, it is contended that the presumption to be drawn under Section 20 of the P.C. Act is not an inviolable one. The same can be rebutted by the accused either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. Also it is equally settled that the burden of proof placed upon the accused person against whom the presumption is drawn under Section 20 of the PC Act is not akin to the burden placed on the prosecution to prove the case beyond reasonable doubt. Relying on these principles, it is contended that the finding of the learned Special Judge that an initial demand of bribe which led to the registration of the case is more or less established is perverse and bad in law.

4. Ld. Counsel for the Appellant further contends that PW 1 in his testimony admits that Kulwant Singh DW1 was present when he went to the house of the Appellant in the morning on 8th January, 1993. However, the learned Special Court disbelieved the testimony of DW1.

PW 1 has turned hostile and he was duly confronted with his statement recorded under Section 161 Cr. P.C.. However, this confrontation is contrary to the requirement of Section 162 of the Cr.P.C. where it is provided that the witness can be confronted with his previous statement only if the previous statement is “duly proved”. Thus, until and unless the previous statement is duly proved i.e. by the witness or by the investigating officer, the same cannot be used for any purpose including the purpose of confrontation. Thus, no reliance can be placed on the confrontation from a previous statement which has not been proved. Despite the fact that both Inspector Punia and Inspector Peshin were material witnesses, however, they were not examined and thus material eye-witnesses have been kept away and so adverse inference should be drawn against the prosecution. A hostile witness can only be termed as partly reliable and if the so-called independent panch witnesses have not supported the case of the prosecution, it cannot be said that the prosecution has proved its case beyond reasonable doubt.

5. It is next contended that until and unless, the material and the main witness deposes about the fact the deposition of the other witnesses cannot be looked into as the other witnesses are only corroborative. It is the statement of the main witness which is material who has to state the

material facts. Reliance is placed on *Mangal Singh v. The State Cr Rev. No. 47 of 1974* decided on 26th October, 1976 by this Court. Thus, in the present case the testimony of PW 7 stating that PW 8 recorded the statements will be only a corroborative evidence and not substantive evidence. A raiding officer is neither a witness of demand nor of acceptance. Merely handing the money or counting the currency notes is not a proof of acceptance by the accused. Moreover, as per the evidence, the demand, if any, was by S.L.Tagra who has not been made an accused and thus the Appellant can also not be convicted for the alleged offences. The prosecution case as suggested is also that Sh. S.L. Tagra had told PW 1 that objections raised on his file have been removed and the cheque would be delivered in 2-3 days. Though the learned Special Court has come to a conclusion that PW 3 has stated about the bribe amount, however, no demand or acceptance has been proved by PW 3. Moreover PW 3 is not even a witness to the demand or acceptance, as at the time of the raid he was outside the house. Relying on *T. Subramanian vs. State of Tamil Nadu 2006(1) JCC 197*, it is contended that if two views are possible then it cannot be said that the prosecution has proved its case beyond reasonable doubt and thus the Appellant is entitled to be acquitted for the offence charged.

6. Learned counsel for the Respondent on the other hand contends that the Appellant is a public servant as defined under Section 2(c)(iii) of the P.C. Act as he was employed as an Administrative Officer with New India Assurance Company Ltd. This Company was incorporated pursuant to an enactment General Insurance Business (Nationalization) Act, [57 of 1972]. Since the question whether the Appellant would fall in the ambit of “public servant” or not was purely a question of interpretation of a Statutory provision enacted by the Parliament, no evidence was required to be led. The learned Trial Court in view of Section 56 and 57 of the Indian Evidence Act, 1872 was duty bound to take judicial notice of this enactment. Thus, the finding of the learned Special Court, that the accused being an employee of a company created by a Central Act falls squarely within the definition of “Public Servant” as defined under Section 2(c)(iii) of the PC Act deserves to be upheld. Reliance is placed on *Government of Andhra Pradesh & Ors. v. P. Venku Reddy* (2002) 7 SCC 631 to contend that a “public servant” has been defined comprehensively in clause (c) of Section 2 of the PC Act and it would not be appropriate to limit the scope of the definition clause by construction which would be against the object of the Statute. Moreover, the Appellant in his statement under Section 313 Cr.P.C. has

unequivocally admitted the factum of his being a public servant and thus, this fact was not required to be proved in the trial as per Section 58 of the Evidence Act.

7. It was next contended by the learned counsel for the Respondent that the essential ingredients of Section 7 and 13(1)(d) of the P.C. Act have been proved beyond reasonable doubt. A careful reading of the testimony of PW 1 establishes that the Appellant had demanded ₹1,00,000/- from him on behalf of himself and his senior officer Sh. S.L. Tagra and PW1 had turned hostile only with regard to the factum of acceptance of bribe at the time of the raid. Thus, the portion of the statement of PW1 which proves the prosecution version has to be read in evidence. The acceptance and recovery of the tainted money is proved by the testimony of PW 8 A.G.L. Kaul which is duly corroborated by the testimony of PW 3 who has admitted the hand wash turning pink and PW 6 V.S. Besaria the Sr. Scientific Officer, Grade-I, CFSL who submitted that the result of analysis of the contents of the bottles of the respective hand washes gave positive test for phenolphthalein. The decisions relied upon by the learned counsel for the Appellant are not applicable to the facts of the present case. Reliance is placed on *M. Narsinga Rao vs. State of Andhra Pradesh 2001(1) SCC 691*, to contend that once the

prosecution has proved the receipt of gratification, the Court was under a legal obligation to presume that such gratification was accepted as a reward for doing the public duty. From the testimony of DW1 Kulwant Singh, it is manifest that DW-1 and PW-1 were not known to each other so well that PW1 would take DW1 to the house of the Appellant while talking to him about the claim pending with the insurance company. The involvement of the Appellant in the alleged incident is further substantiated from the fact that the claim file of PW-1 was recovered from the house of the Appellant. Both PW-1 and PW-2 have testified that they had seen the file at the residence of the Appellant and had witnessed the recovery thereof after the trap. The fact that the claim file was recovered from the residence is also admitted by the Appellant in his statement under Section 313 Cr.P.C. Thus, the Appellant having retained the file despite having recommended the case on 24th December 1992, is an important circumstance to prove that the Appellant took illegal gratifications. Thus, from the chain of circumstances proved by the testimony of the prosecution witnesses, the prosecution has proved the case beyond reasonable doubt and hence there is no merit in the present appeal and the same should be rejected.

8. I have heard the learned counsel for the parties and perused the record. The first and foremost contention of the learned counsel for the Appellant that the Appellant is not a public servant is meritless. As per Section 2(c)(iii) of the PC Act any person in the service of a corporation established by or under a Central Act or a Govt. Company as defined under Section 617 of the Companies Act, 1956 is a public servant. The definition of word 'public servant' was expanded by the Act of 1988 and is wider in comparison to the PC Act of 1947. By the General Insurance Business (Nationalisation) Act 1972, shares in the capital of every Indian Insurance company stood transferred to and vested in the Central Government free of all trust, liabilities and encumbrances affecting them. By virtue of Section 7 of the General Insurance Business (Nationalisation) Act, 1972 every whole time officer or other employee of an existing insurer other than an Indian Insurance Company who was employed by that insurer wholly or mainly in connection with his general insurance business immediately before the appointed day shall, on the appointed day, become an officer or other employee, as the case may be, of the Indian Insurance Company in which the undertaking of that insurer or that part of the undertaking to which the service of the officer or the other employee relates has vested and shall hold his office or service

under the Indian Insurance Company. In terms of the Act, all the shares of the New Indian Assurance Company got vested in the Central Government, thus it became a Government Company. Further, in terms of the definition of the word “public servant” in Section 2(c)(iii) of the PC Act the Appellant was thus “in the service and pay” of a Government Company acquired by way of a Central Act and hence, a public servant. I do not find any merit in the contention of the learned counsel for the Appellant that the provision of Section 2(c)(iii) of the PC Act would apply to a Company incorporated by the Act and not a Company acquired by the Act. The expression used in Section 2(c)(iii) is very wide as it includes both a corporation established by or under a Central, Provincial or State Act. Moreover, it may be noted that on the coming into force of the P.C. Act, 1988, the New India Assurance Company was a Government Company as defined under Section 617 of the Companies Act, 1956 and the Appellant in “service and pay” of a Government company. In *Venku Reddy (supra)* it was held:

*“12. In construing definition of 'public servant' Clause (c) of Section 2 of the 1988 Act, the court is required to adopt a purposive approach as would give effect to the intention of legislature. In that view **Statement of Objects and Reasons** contained in the Bill leading to the passing of the Act can be taken of assistance of. It gives the background in which the legislation was enacted. The present Act, with much*

wider definition of 'public servant', was brought in force to purify administration. When the legislature has used such comprehensive definition of 'public servant' to achieve the purpose of punishing and curbing growing corruption in government and semi-government departments, it would be appropriate not to limit the contents of definition clause by construction which would be against the spirit of the statute. The definition of 'public servant', therefore, deserves a wide construction"

9. The reliance of the learned counsel for the Appellant on the decision in *M. Muniswamy (supra)* is misconceived as the said decision was rendered as per the definition of "public servant" under the Prevention of Corruption Act, 1947 wherein the definition of the word "public servant" was in terms of Section 21 of the IPC which was a very restrictive definition and thus the Hon'ble Supreme Court held that the evidence led by the prosecution was insufficient to hold that the Respondent was a public servant falling within the ambit of Section 21 of the IPC. Moreover, the witness in the said case did not state that it was a Government Company or it was a corporation created under the Companies Act or that the Government held more than 50 per cent shares of that company. However, in the present case, there exists an Act of the Parliament by virtue of which shares of the New India Assurance Company stood transferred to the Central Government on 2nd January, 1973 and it is thus a Government Company under a Central Act.

10. The learned Trial Court rightly took judicial notice of the fact that it was a Government Company incorporated under the Act of 1972. As per Section 57 of the Evidence Act, the learned Special Court was duty bound to take judicial notice of the Act of the Parliament and in terms of Section 56 of the Evidence Act, this fact was not required to be proved by the prosecution. Thus failure to produce the Act by the prosecution is not fatal. A similar view was taken in *Sham Lal and another v. Muni Lal and others AIR 1972 Punjab and Haryana 199* wherein it was held that when the Court is duty-bound to take judicial notice of a fact, it is itself bound to hunt them up and apply it to the facts of the case even though the parties or their counsel fail to produce them.

11. I also do not find any merit in the contention of the learned counsel for the Appellant that the factum of the Appellant is a public servant has not been put to him under Section 313 Cr. P.C. and thus, it cannot be used against him. As per Section 313 Cr.P.C., the court is required to question the accused personally to explain any circumstances appearing in evidence against him. In the present case, this is not a circumstance adduced by way of prosecution evidence. The fact that the Appellant was an employee with the New India Assurance Company Ltd has been proved by the testimony of PW-4 Om Prakash Rana, the General

Manager of the New India Assurance Company who had granted the sanction for prosecution of the Appellant in terms of Section 19 of the P.C. Act vide Ex. PW4/A. On taking judicial notice of the fact that New India Assurance Company is a Government Company it was thus inevitable that the Appellant was a “public servant” under Sec. 2(c) of the PC Act. The learned Special Judge rightly took judicial notice of the enactment acquiring the said Company and that the New India Assurance Company Ltd. was a Government Company. Since the court took judicial notice of this fact it was not required to be put as a question to the Appellant under Section 313 CPC as the same was not a circumstance appearing in evidence. Suffice it is that the Appellant has been asked that he was working as an Administrative Officer with the New India Assurance Company in his statement under Section 313 CPC, which fact he had admitted. In *R.K. Dalmia v. Delhi Administration AIR 1962 SC 1821*, it has been held by the Hon’ble Supreme Court:

“An accused is questioned under Section 342 to explain any circumstances appearing in the evidence against him. It is not necessary to ask him to explain any inference that a Court may be asked to draw and be prepared to draw from the evidence on record. No questions can be put regarding a matter when there is no evidence about it.”

12. From the testimony of PW 1, the Complainant has proved his complaint Ex. PW1/D made to the CBI wherein it is stated that the

Appellant demanded bribe amount from him, thus the initial demand by the Appellant is proved beyond reasonable doubt. Merely because DW1 who is stated to have accompanied PW 1 on the morning of 8th January, 1993 did not support his version would not belie the testimony of PW 1 in this regard. It may be noted from the testimony of PW 1 that in his examination-in-chief, he supported the entire prosecution case except the demand at the time of trap in the late evening of 8th January, 1993. He has stated that on 7th January, 1993 after reaching the office of New India Assurance Company, he enquired about his claim. He was informed by the accused B. S. Sikka that the claim was ready and only Sh. S.L. Tagra, Senior Divisional Manager was to sign the file who was on leave that day. On the next morning, he visited the residence of the accused and enquired from him as to why Sh. Tagra has not cleared his file. On this the accused told him that Sh. Tagra will clear his claim only after accepting ₹ 1 Lakh. This testimony of PW1 is not an improvement from his written complaint Ex. PW1/D which was made by him to the S.P., Anti-Corruption, CBI, thus the initial demand made by the Appellant from the complaint stands proved. This witness was cross-examined by the learned APP. The statement of PW1 was recorded on 29th August, 1996 and 26th May, 1997. His cross-examination by the APP was

deferred and subsequently on 2nd February, 1998 when he was cross-examined by the learned APP, he turned a total volte face and did not support the prosecution case.

13. The learned counsel for the Appellant has contended that a witness can be confronted by his previous statement under Section 162 Cr.P.C., only after the same is duly proved. Thus, the statement has to be exhibited either by the maker of the statement or by the investigating officer who recorded the same. In a case where the witness turns hostile from his previous statement, there are bleak chances of his admitting the previous statement. Confronted with a similar situation, it was held in *Nga U Khine & Ors. v. Emperor AIR 1935 Rangoon 98* that those parts of the statements to the police which are used in cross-examination to contradict the witness must be proved and brought onto the record. This can ordinarily be done by the admission of the witness that he made the statement, or by examination of the police officer who recorded it. If the latter course is necessary, in order to avoid delay there can be no objection to allowing cross-examination subject to subsequent proof of the statement. In the present case, PW1 in his cross-examination by the learned APP has admitted that his statement was recorded under Sec. 161 CrPC by the Investigating Officer PW8, who has also admitted that he

had recorded the statement of the Complainant under Sec. 161, CrPC. However, the said statement has not been exhibited. The objection, if any, as to the mode of proof should have been taken by the Appellant at the time of trial as was held by the Hon'ble Supreme Court in *Phool Kumar v. Delhi Admn. (1975) 1 SCC 797* and *Ashfaq vs State (Govt. Of NCT of Delhi) (2004) 3 SCC 116*.

14. In the present case as held above, the initial demand has been proved by way of direct evidence from the overwhelming testimony of PW 1. The question further remains whether the prosecution has been able to prove beyond reasonable doubt the demand and acceptance of the bribe amount when the money was taken around 9:00 p.m. on the 8th January, 1993 at the time of raid. In this regard, both PW1, the Complainant and PW 2, the shadow witness have turned hostile. PW 1 had supported the entire prosecution case, however, to this extent, he turned hostile. The evidence of this witness was deferred for his cross-examination by the learned APP, and when after around 8 months the evidence was recorded he gave a different version to the entire prosecution case. The testimony of PW 1 to the extent he turned hostile is contrary to the scientific evidence. After the recovery of money, the hand wash of the Appellant was taken and both his hand wash gave pink

colour and as per the testimony of PW 6, the exhibits gave positive test for phenolphthalein. In the absence of the testimony of PW 1 Complainant and PW 2 shadow witness, it has to be seen whether the acceptance of the bribe amount has been proved by the testimony of the trap officer PW 8 Inspector A.G.L. Kaul and other circumstantial evidence. As per this witness, at about 9:35 p.m., the independent witness came out and gave the pre-appointed signal by lighting a cigarette. On this, they rushed inside the house and on entering the house, they noticed that in the first room the Appellant was sitting on a sofa. Some currency notes were lying on a table in front of said sofa and one bundle of the currency notes was in the hand of the Appellant and he was counting the same. PW 8 disclosed his identity and challenged the Appellant of having demanded and accepted the bribe from the Complainant. He became perplexed, suddenly got up and threw the currency notes from his hands below the table. In the meantime, he was caught by Inspector Punia and Inspector Peshin. Thereafter, his hands were dipped in solution of sodium carbonate in two separate containers. Both the right and left hand wash gave pink colour and the two washes were separately sealed. The site plan was prepared vide Ex. PW2/C and the file relating to the claim of PW 1 was also seized from the table vide

Ex. PW2/D. This part of the testimony of PW 8 is corroborated by PW1, who admits seeing the file at the residence of the Appellant when he went in the evening of 8th January, 1993. The report of PW 6 Sh. V.S. Besaria Ex. PW 6/A that the solutions gave positive test for phenolphthalein corroborates the testimony of PW 8. Thus, the factum of acceptance of the money has been proved by the circumstantial evidence and by the testimony of PW8. The reliance of the learned counsel on *Mangal Singh (supra)* to contend that it is the statement of the main witness which is material and other witnesses are only corroborative loses ground in view of clear and cogent testimony of PW8 corroborated by the scientific evidence Ex. PW6/A. It is well settled that an incriminating circumstance, in the absence of direct evidence can be proved by circumstantial evidence and an offence under the PC Act is no exception to this rule of evidence.

15. At this stage, it would be relevant to note the observations of the Hon'ble Supreme Court in *M. Narsinga Rao (supra)* wherein it was held:

12. While advertng to the first contention of the learned Counsel we may reproduce Section 20(1) of the Act [That sub-section is virtually the same as Section 4(1) of the predecessor Act of 1947].

20(1) Presumption where public servant accepts gratification other than legal remuneration. - (1) Where, in any trial of an

offence punishable under Section 7 or Section 11 or Clause (a) or Clause (b) of Sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

13. Before proceeding further, we may point out that the expressions "may presume" and "shall presume" are defined in Section 4 of the Evidence Act. The presumptions falling under the former category are compendiously known as "factual presumptions" or "discretionary presumptions" and those falling under the latter as "legal presumptions" or "compulsory presumptions". When the expression "shall be presumed" is employed in Section 20(1) of the Act it must have the same import of compulsion.

14. When the sub-section deals with legal presumption it is to be understood as in terrarium i.e. in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc., if the condition envisaged in the former part of the section is satisfied. The only condition for drawing such a legal presumption under Section 20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act."

15. The word "proof need be understood in the sense in which it is defined in the Evidence Act because proof depends upon

the admissibility of evidence. A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or consider its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. This is the definition given for the word "proved" in the Evidence Act. What is required is production of such materials on which the court can reasonably act to reach the supposition that a fact exists. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. Fletcher Moulton L.J. in Hawkins v. Powells Tillery Steam Coal Company, Ltd. 1911 (1) K.B. 988 observed like this:

Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion.

16. The said observation has stood the test of time and can now be followed as the standard of proof. In reaching the conclusion the court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to presumptions in law. Law gives absolute discretion to the court to presume the existence of any fact which it thinks likely to have happened. In that process the court may have regard to common course of natural events, human conduct, public or private business vis-a-vis the facts of the particular case. The discretion is clearly envisaged in Section 114 of the Evidence Act.

17. Presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. Presumption in Law of Evidence is a rule indicating the stage of shifting the burden of proof.

From a certain fact or facts the court can draw an inference and that would remain until such inference is either disproved or dispelled.

18. For the purpose of reaching one conclusion the court can rely on a factual presumption. Unless the presumption is disproved or dispelled or rebutted, the court can treat the presumption as tantamounting to proof. However, as a caution of prudence we have to observe that it may be unsafe to use that presumption to draw yet another discretionary presumption unless there is a statutory compulsion. This Court has indicated so in [Suresh Budharmal Kalani v. State of Maharashtra](#) : 1998CriLJ4592 . "A presumption can be drawn only from facts - and not from other presumptions - by a process of probable and logical reasoning."

19. Illustration (a) to Section 114 of the Evidence Act says that the court may presume that "a man who is in the possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession." That illustration can profitably be used in the present context as well when prosecution brought reliable materials that Appellant's pocket contained phenolphthalein smeared currency notes for Rs. 500/- when he was searched by PW-7 DSP of the Anti Corruption Bureau. That by itself may not or need not necessarily lead to a presumption that he accepted that amount from somebody else because there is a possibility of somebody else either stuffing those currency notes into his pocket or stealthily inserting the same therein. But the other circumstances which have been proved in this case and those preceding and succeeding the searching out of the tainted currency notes, are relevant and useful to help the court to draw a factual presumption that Appellant had willingly received the currency notes.

20. PW-7 DSP said that PW-1 approached him on the previous day and lodged Ext. P-2 complaint stating that Appellant was persistently demanding Rs. 500/- from him. The currency notes were actually prepared by PW-7 by smearing them with phenolphthalein powder. When Appellant was caught red

handed with those currency notes he never demurred to PW-7 that those notes were not received by him. In fact, the story that such currency notes were stuffed into his pocket was concocted by the Appellant only after lapse of a period of 4 years and that too when Appellant faced the trial in the court.

21. From those proved facts the court can legitimately draw a presumption that Appellant received or accepted the said currency notes on his own volition. Of course, the said presumption is not an inviolable one, as the Appellant could rebut it either through cross-examination of the witnesses cited against him or by adducing reliable evidence. But if the Appellant fails to disprove the presumption the same would stick and then it can be held by the court that the prosecution has proved that Appellant received the said amount.

16. The decisions relied upon by the learned counsel for the Appellant have no application to the facts of the present case. *A. Subair (supra)* was a case wherein an oral complaint was made by the Complainant and since the Complainant was not produced in the court as a witness and there was no explanation given for the non-production of the material witness, it was held that the initial demand made by the accused was not proved at all. In *C.M. Girish (supra)*, the accused was able to rebut the presumption and show that the amount received was for re-payment of a loan. In the present case, the initial demand and the motive have been proved by direct evidence which is cogent and convincing. The acceptance of the money has been proved by circumstantial evidence from the testimony of PW 8

and PW 6. In *Bansari Das (supra)*, the Hon'ble Supreme Court gave benefit of doubt to the Appellant therein for the reason that the only witnesses who supported the prosecution case were neither the eye-witnesses to the demand or the acceptance of money by the accused from the Complainant, PW-2. PW 4 therein made a statement before the Court which was quite different than what he stated to the police during the investigation under Section 161 Cr.P.C. PW 2 and PW 4 totally denied the incident, the demand and acceptance. The Hon'ble Supreme Court thus held that it is a settled canon of jurisprudence that the conviction of an accused cannot be founded on the basis of inference and the offence should be proved against the accused beyond reasonable doubt either by "direct or even by circumstantial evidence" by establishing each link of the events pointing towards the guilt of the accused.

17. Thus, in the present case the prosecution has been able to prove the case beyond reasonable doubt partly through direct evidence and partly through circumstantial evidence. In *Union of India Thr. Inspector, CBI vs. Purna Nandu Biswas 2005 (12) SCC 576*, the Hon'ble Supreme Court held that where a public servant accepts gratification other than legal remuneration, the legal presumption under Section 20 was not applicable for an offence under Section 13(1)(d). In the present case the Appellant

has been convicted for offence under Section 7 and 13(1)(d) read with Section 13 of the P.C. Act.

18. In my opinion, the prosecution has proved its case by completing the chain of circumstances coupled with the legal presumption applicable under Section 20 of the P.C. Act which could not be dispelled by the Appellant by preponderance of probability through the cross examination of the prosecution witnesses and thus the Appellant is liable to be convicted for the offence punishable under Section 7 of the P.C. Act. The Appellant is thus acquitted for offence punishable under Section 13(2) read with 13(1)(d) of the PC Act. The conviction and sentence of the Appellant awarded by the Ld. Special Court for offence punishable under Section 7 of the P.C. Act is upheld. The Appeal is partly allowed. The Appellant be taken into custody to undergo the remaining sentence. The bail bond and the surety bond are cancelled.

(MUKTA GUPTA)
JUDGE

MARCH 25, 2010